

EXHIBIT 1

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NEW YORK

TRAVELERS INDEMNITY COMPANY
One Tower Square
Hartford, Connecticut 06183,

Index No.:

and

SUMMONS

TRIUMPH CONSTRUCTION CORP.
1354 Seneca Avenue
Bronx, New York 10474,

Plaintiffs,

v.

UNITED STATES FIRE INSURANCE COMPANY
305 Madison Avenue
Morristown, New Jersey 07962,

Defendant.

To the above-named defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein. Venue is based on Travelers Indemnity Company's residence.

Dated: June 22, 2022

KENNEY SHELTON LIPTAK NOWAK LLP

By:



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STATE OF NEW YORK
SUPREME COURT : COUNTY OF NEW YORK

TRAVELERS INDEMNITY COMPANY and
TRIUMPH CONSTRUCTION CORP.,

Index No.:

Plaintiffs,

COMPLAINT

v.

UNITED STATES FIRE INSURANCE COMPANY,

Defendant.

Plaintiffs Travelers Indemnity Company (“Travelers”) and Triumph Construction Corp. (“Triumph”), by and through their attorneys, Kenney Shelton Liptak Nowak LLP, for their complaint against United States Fire Insurance Company (“USFI”), allege on information and belief:

1. Travelers is a foreign insurance corporation organized and doing business pursuant to the laws of the State of Connecticut with a principal New York office located in the City of New York, New York County, New York, and is authorized to transact business in the State of New York.

2. Triumph is a domestic corporation organized and doing business pursuant to the laws of the State of New York.

3. USFI is a foreign insurance corporation organized and doing business pursuant to the laws of the State of Delaware with offices for the transaction of business in the City of New York, New York County, New York, and is authorized to transact business in the State of New York.

4. This action arises out of an incident that allegedly occurred on October 4, 2018, at a construction project located at or near 2878 West 19th Street, Brooklyn, New York 11224 (the “project”).

5. At all relevant times, the project was owned by the City of New York.

6. Prior to October 4, 2018, Triumph entered into one or more written subcontracts with HAKS Engineers, Architects, and Land Surveyors, P.C. to serve as a construction manager on the project (“Triumph-HAKS contract”).

7. The Triumph-HAKS contract required Triumph to procure commercial general liability and automobile liability insurance and to make the City of New York an additional insured under both policies.

8. On October 4, 2018, Asdrubal Rodas (“Rodas”) was working for Triumph at the project when he was allegedly struck by a hoisted metal plate being transported by a Komatsu WA380 wheel loader.

9. On or about May 20, 2019, an action was commenced in New York Supreme Court, Kings County, captioned Asbrudal Rodas v. City of New York, (Index No. 511143/2019) (“Rodas”) asserting causes of action for Labor Law violations and negligence.

10. It has been alleged in Rodas that Rodas was employed by Triumph, that Rodas was injured when he was caused to be knocked to the ground by a hoisted metal plate being transported by a wheel loader driving down a city street, and that Rodas was injured as a result of the City of New York’s Labor Law violations and negligence.

11. Travelers issued Triumph a commercial general liability policy (no. VT1NK-EXGL-4E99538A-IND-18) for the period of August 1, 2018, to August 1, 2019.

12. The policy issued by Travelers to Triumph contains a \$50,000 self-insured retention.

13. Travelers agreed to defend the City of New York in connection with Rodas as an additional insured under the policy Travelers issued to Triumph.

14. Travelers continues to defend the City of New York in Rodas.

15. USFI issued Triumph a business auto policy (no. 1337440743) for the period August 1, 2018, to August 1, 2019, subject to a \$1,000,000 per-accident limit.

16. The City of New York qualifies as an additional insured under the USFI auto policy issued to Triumph and is entitled to a defense and indemnification from USFI in connection with Rodas on a primary and noncontributory basis.

17. Travelers has incurred and continues to incur costs defending the City of New York in Rodas.

18. Triumph has incurred and continues to incur costs in connection with the defense of the City of New York in Rodas.

19. On March 6, 2019, USFI wrongfully denied coverage to the City of New York under the USFI policy.

20. Following USFI's March 6, 2019 disclaimer letter, Travelers and Triumph have repeatedly demanded that USFI fulfill its obligations to the City of New York as an additional insured.

21. USFI has repeatedly failed to provide the City of New York with the defense and indemnification to which it is entitled in Rodas.

22. Travelers and Triumph have no adequate remedy at law and have been compelled to commence this declaratory judgment action to enforce their rights and USFI's obligations under the auto policy issued by USFI to Triumph.

FIRST CAUSE OF ACTION

23. Travelers and Triumph repeat and reallege the allegations contained in paragraphs 1 through 22 as if fully set forth herein.

24. Rodas's accident and alleged injury arose out of the use of a covered auto under the auto policy USFI issued to Triumph in effect on the date of the alleged incident.

25. The City of New York is an additional insured under the USFI policy issued to Triumph in effect on the date of the alleged incident.

26. The pleadings and allegations in Rodas trigger USFI's duty to defend the City of New York and to indemnify the City of New York in the event a verdict or judgment is entered against it in Rodas.

27. USFI's refusal to defend and indemnify the City of New York in connection with Rodas constitutes a breach of the USFI auto policy.

28. USFI's refusal to defend and indemnify the City of New York in connection with Rodas has damaged Triumph and Travelers, which have incurred the City of New York's defense costs to date as a result of USFI's breach of its obligations.

29. Travelers and Triumph are entitled to a declaration that the City of New York is an additional insured under the USFI policy and is entitled to a defense and indemnification in Rodas from USFI on a primary and noncontributory basis.

30. Travelers is entitled to a judgment against USFI for indemnity for any liability the City of New York may have in Rodas.

31. Triumph is entitled to a judgment against USFI for indemnity for any liability the City of New York may have in Rodas.

32. Travelers is entitled to a judgment against USFI for all attorneys' fees, costs, and expenses it has incurred and will incur in defending the City of New York in Rodas.

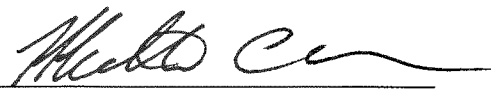
33. Triumph is entitled to a judgment against USFI for all attorneys' fees, costs, and expenses it has incurred and will incur in defending the City of New York in Rodas.

WHEREFORE, Travelers and Triumph demand judgment against USFI ordering that:

1. USFI must defend and indemnify the City of New York on a primary and non-contributory basis in Rodas;
2. USFI must reimburse Travelers for all attorneys' fees, costs, and expenses incurred for the defense of the City of New York in Rodas up to and through the date USFI assumes the City of New York's defense on a primary and non-contributory basis;
3. USFI must reimburse Triumph for all attorneys' fees, costs, and expenses incurred for the defense of the City of New York in Rodas up to and through the date USFI assumes the City of New York's defense on a primary and non-contributory basis; and
4. For such other and further relief as the Court deems just and proper.

Dated: June 22, 2022

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